

**SELF-INSURING EMPLOYERS EVALUATION BOARD
INFORMAL CONFERENCE FINDINGS**

IN THE MATTER OF:

Wasserstrom Holdings, Inc. (Employer), Risk No. 20004264-0

(Injured Worker), Claim No. [REDACTED]

Complaint No. 15998

[REDACTED]
Ward, Kaps, Bainbridge, Maurer & Melvin
580 South High Street, Suite 100
Columbus, OH 43215-5644

Wasserstrom Holdings, Inc.
Attn: Workers' Compensation Administrator
477 South Front Street
Columbus, OH 43215

Porter, Wright, Morris & Arthur LLP
Attn: Christopher C. Russell
41 South High Street, Suites 2800 – 3200
Columbus, OH 43215-6194

Frank Gates Service Company
Attn: Geoffrey Dunham
P.O. Box 182364
Columbus, OH 43218

FOR THE INJURED WORKER: [REDACTED]

FOR THE EMPLOYER:

Christopher Russell and Christie Budzina

FOR THE ADMINISTRATOR:

Jean Krum

This matter was set for informal conference before the Self-Insuring Employers Evaluation Board on May 26, 2009 on Complaint No. 15998. The complaint alleged delays of thirty or more days in response to C-9s requesting services; denial of a request for a psychological assessment; inability to get authorization for the prescription drug Ambien; long delays in response to telephone conversations; and more than a year's delay in vehicle modifications, even after approval and several promises. After review of the correspondence on file, and the arguments made at the conference, it is clear that the complaint actually concerns the timeliness of actions taken by the employer, specifically with respect to the C-9 dated May 7, 2007 requesting a Bruno Turny, Bruno Out Rider, and Bruno Power Topper/Cap.

On October 29, 2007, the injured worker filed a self-insured complaint alleging delays of more than 30 days in response to C-9s requesting services, denial of request for psychological assessment, inability to get authorization for drugs prescribed for recognized conditions, long delays in response to telephone conversations and a lack of returned calls. In a letter dated November 19, 2007, the Self-Insured Department found the complaint invalid, citing to no supporting documents.

On January 9, 2008, the injured worker filed what appears to be a copy of the October 29, 2007 complaint, adding the additional complaint, "still no modifications to vehicle one year later, even after approval and several promises." The BWC Self-Insured Department and the Administrator's Designee determined the complaint was valid, finding violations of Ohio Adm.Code 4123-19-03(K)(5) and 4123-19-03(H)(2) and (3). BWC found that the employer failed to timely respond to the C-9 dated May 7, 2007, altered the C-9, failed to assist the injured worker, and failed to provide information to the injured worker regarding the processing of his claim.

Ohio Adm.Code 4123-19-03(K)(5) provides in pertinent part, "...the employer shall approve or deny a written request for treatment within ten days of receipt of the request. If the employer fails to respond to the request, the authorization for treatment shall be deemed granted and payment shall be made within thirty days of receipt of the bill." Although BWC cited to 4123-19-03(H) in its decision, the Board finds BWC intended to reference Ohio Adm.Code 4123-19-03(I)(2), (3). Paragraph (I) of the rule outlines the duties of an employer's workers' compensation administrator. These duties include, "(2) Providing assistance to claimants in the filing of claims and applications for benefits; (3) Providing information to claimants regarding the processing of claims and the benefits to which claimants may be entitled."

Early in the claim, the employer assigned a nurse case manager, Lisa Hackett with VocWorks, to act as liaison on medical issues. The C-9 dated May 7, 2007 was faxed to VocWorks and in a memo dated May 25, 2007 Ms. Hackett recommended approval of the C-9. The employer initially denied the C-9 on May 30, 2007 pending further review, but ultimately approved the C-9 on September 11, 2007.

At conference, the injured worker informed the Board that it took over a year for the modifications requested in the May 7, 2007 C-9 to be made to his truck. ██████████ stated that he has been having difficulties with the representative from Frank Gates Service Company assigned to his claim, stating that it takes too long to get medications, equipment or treatment approved. ██████████ expressed his desire that the outcome of the complaint be that his claim be processed faster.

At conference and in its position statement, the employer made several arguments in support of its assertion that the complaint should be found invalid. In its position statement, the employer first argued that the C-9 at issue was faxed to the nurse case manager and that the nurse case manager is not the employer's designated representative. The employer asserted that all action taken by the employer's representative was timely. At conference, the employer acknowledged that the nurse case manager is an agent of the employer. Mr. Russell further stated that if the injured worker was dissatisfied with the employer's initial denial of the C-9, the proper remedy is to file a motion requesting a hearing. As to the BWC finding that the C-9 was altered, the employer asserted that the only change to the C-9 was to change the status from "pending" to "approved." With respect to the finding that the employer failed to assist the injured worker and failed to provide him information regarding the processing of his claim, the employer pointed out that the injured worker was and continues to be represented by counsel and stated that the concerns set forth in the complaint were never brought to the employer's attention by the injured worker's attorney. Furthermore, the employer noted that counsel for the employer was prohibited from directly contacting an injured worker known to be represented by counsel. Finally, the employer argued that the issues raised by the complaint were properly addressed by the Industrial Commission hearing process, not in a complaint against the self-insuring employer.

The Board finds that the employer hired and designated the nurse case manager as a contact person for this claim. The Board finds that the nurse case manager was the employer's agent and therefore, the filing of the C-9 at issue with the employer's agent constitutes notice to the employer.

The Board finds that Ohio Adm.Code 4123-19-03(K)(5) pertains to requests for treatment. In this case, the C-9 at issue requested equipment, not treatment. Even if the C-9 at issue were deemed to be a request for treatment, paragraph (K)(5) provides its own remedy: if the employer fails to respond within the required ten days, authorization is deemed granted and the employer shall make payment within thirty days of receipt of the bill.

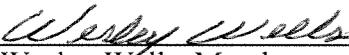
As to the issue of the employer's failure to assist and provide claims processing information to the injured worker, BWC found the employer failed to notify the injured worker of the reason for the delay in approving the May 7, 2007 C-9 and that the injured worker was not told why the request for the Bruno Turny was initially approved but later denied. BWC found this course of conduct to constitute a violation of Ohio Adm.Code 4123-19-03(I)(2) and (3). After careful review, the Board finds persuasive the employer's argument that the injured worker has failed to establish an obligation with which the employer has failed to comply. While it is true the employer could have supplied the injured worker with additional information to address his concerns, there is no legal requirement to do so that has been violated in this case.

The finding of a valid complaint is an extraordinary remedy and therefore applicable rules must be applied strictly. The Board finds no violation of a specific rule and the issues raised do not rise to the level of a valid complaint. Therefore, Complaint No. 15998 is found invalid. Notwithstanding the foregoing, however, the Board finds the self-insuring employer's actions in this matter less than exemplary. While the Board recognizes the services requested were not routine, the Board is deeply concerned that there is no indication the employer took any action to minimize the inherent delay in addressing and providing the requested services. The Board takes this opportunity to remind and admonish the self-insuring employer that the Board will hold it responsible for the action or inaction of any claims management service provider it utilizes in administering its claims, when it results in an employer decision that is in violation of the Ohio Revised Code, Ohio Administrative Code or Industrial Commission order pertaining to the obligations of a self-insuring employer.

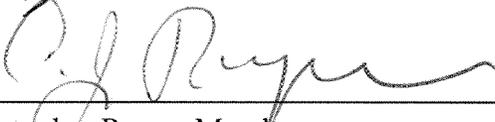
SELF-INSURING EMPLOYERS EVALUATION BOARD



Kevin R. Abrams, Chairman YES



Wesley Wells, Member NO



Christopher Royer, Member YES

DATE MAILED: 14th DAY OF July, 2009